

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK D. DALHART, PAUL B. ANDERSON
and DAVID A. DAMICO

Appeal No. 97-2244
Application 07/986,521¹

ON BRIEF

Before FRANKFORT, McQUADE and NASE, Administrative Patent Judges.
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal, filed in response to the final rejection dated February 15, 1996 (Paper No. 17), involves rejected claims 28, 29, 31 and 51. Claims 27 and 34 stand allowed. Claims 30 and 53 through 56, the only other claims pending in the application, have been indicated as containing allowable subject matter but

¹ Application for patent filed December 7, 1992.

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stand objected to as depending from a rejected base claim.

The subject matter on appeal relates to "vacuum assisted, vapor recovery fuel nozzles" (specification, page 1). Copies of claims 28, 29, 31 and 51 appear in the appendix attached to the appellants' brief (Paper No. 26).²

The references relied upon by the examiner as evidence of anticipation and obviousness are:

Monticup, Jr. et al. (Monticup)	5,004,023	Apr. 2, 1991
Fink, Jr. et al. (Fink)	5,197,523	Mar. 30, 1993
		(filed Aug. 5, 1991)

The claims on appeal stand rejected as follows:

a) 28, 29 and 51 under 35 U.S.C. § 102(e) as being anticipated by Fink; and

b) claim 31 under 35 U.S.C. § 103(a) as being unpatentable over Fink in view of Monticup.

Reference is made to the appellants' brief (Paper No. 26)

² Our review of the claims on appeal indicates that the following terms lack a proper antecedent basis (line numbers correspond to those appearing in the appendix to the brief): "said shut off means" (claim 51, line 17); "the vapor return passage" (claim 51, line 25); "the venting passage" (claim 51, line 26); and "the conical portion" (claim 31, line 5). These informalities are deserving of correction in any further prosecution before the examiner.

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and to the examiner's answer (Paper No. 27) for the respective positions of the appellants and the examiner with regard to the propriety of these rejections.

Turning first to the standing 35 U.S.C. § 102(e) rejection, anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Independent claim 51 recites a vapor recovery, automatic shut off, fuel dispensing nozzle comprising, inter alia, a nozzle body having a hand grip portion, a spout, vapor return passageway means extending between an inlet end of the nozzle body through the hand grip portion to a discharge end of the spout, a vapor valve interposed in the vapor return passageway means, and an adapter disposed in a bore in the nozzle body. Claim 51 also requires that "the adapter, in combination with said nozzle body defines portions of said vapor return passageway means leading to the vapor valve and from the vapor valve to an entrance to the vapor return passageway means in said hand grip portion."

It is not disputed that Fink discloses a vapor recovery, automatic shut off, fuel dispensing nozzle comprising, inter alia, a nozzle body having a hand grip portion, a spout, vapor return passageway means extending between an inlet end of the nozzle body through the hand grip portion to a discharge end of the spout, and a vapor valve interposed in the vapor return passageway means. The appellants do contend, however, that Fink's nozzle does not include an adapter as recited in claim 51. The examiner submits, on the other hand, that the structure disposed within the circular housing 56 of Fink's nozzle constitutes such an adapter and refers to the Fink specification at column 4, lines 35 through 49 for a discussion of vapor flow through the nozzle.

Fink's disclosure of the portions of the vapor return passageway means leading to vapor valve 140 and from this valve to the entrance of the vapor return passageway means in the hand grip portion is very short on detail and reasonably can be characterized as being sketchy and ambiguous. It is well established that an anticipation rejection cannot be predicated on an ambiguous reference. In re Turlay, 304 F.2d 893, 899, 134

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USPQ 355, 360 (CCPA 1962). In short, the relevant disclosure in the Fink reference is too ambiguous to support a finding that the elements disposed within the circular housing 56 embody an adapter which in combination with the nozzle body defines portions of the vapor return passageway means leading to the vapor valve and from the vapor valve to an entrance to the vapor return passageway means in the hand grip portion as recited in claim 51. Indeed and to the contrary, the little relevant disclosure that Fink does make would seem to indicate that the nozzle has no such "adapter." In this light, we shall not sustain the standing 35 U.S.C. § 102(e) rejection of independent claim 51, or of claims 28 and 29 which depend therefrom, as being anticipated by Fink.

In addition to not teaching a nozzle having an adapter as recited in claim 51, Fink would not have suggested such a nozzle to one of ordinary skill in the art. Since Monticup, cited by the examiner for its disclosure of a fuel nozzle having a spout-mounting breakaway nut means, does not cure these deficiencies in Fink, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 31 as being unpatentable over Fink in view of Monticup.

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The decision of the examiner is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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JOHN P. McQUADE)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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